

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

CHRISTIE MICHELE WANDRIE,

Debtor.

Case No. 13-44268

Chapter 7

Judge Thomas J. Tucker

**ORDER REQUIRING ATTORNEY TODD M. GERS TO APPEAR AND SHOW CAUSE,
AND TO RESPOND IN WRITING,
WHY HE SHOULD NOT BE SANCTIONED FOR HIS FILING OF DEBTOR'S
SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS IN THIS CASE,
WHICH CONTAINED NUMEROUS FALSE STATEMENTS, AND HIS FAILURE TO
TAKE ANY ACTION TO AMEND AND CORRECT THE FALSE STATEMENTS IN
THE SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS**

On March 6, 2013, attorney Todd M. Gers, on behalf of Debtor Christie Michele Wandrie, filed a voluntary petition for relief under Chapter 7, commencing this case, and also filed, among other things, Schedules A-J (collectively the "Schedules") and a Statement of Financial Affairs.¹ Today, in Adversary Proceeding No. 13-4636, the Court has filed a written opinion in which the Court has found that Debtor's Schedules and Statement of Financial Affairs were false in at least 18 ways.² (A copy of the Court's written opinion is included in the Supplement to this Order, which is being filed in this case today.)

The § 341 First Meeting of Creditors in this case was concluded on May 9, 2013. Attorney Gers continued to represent the Debtor in this bankruptcy case until at least May 31, 2013. Mr. Gers never filed amended Schedules or an amended Statement of Financial Affairs on behalf of the Debtor in this case.

¹ Docket # 1.

² See the Court's "Opinion Stating the Court's Partial Findings of Fact and Conclusions of Law after Trial" (Docket # 63 in Adv. Pro. No. 13-4636).

On June 3, 2013, the Chapter 7 Trustee, Gene R. Kohut, filed Adversary Proceeding No. 13-4636, seeking denial of Debtor's discharge, in relevant part, based on Debtor's numerous false statements. Attorney Jeffrey H. Bigelman and his firm have represented Debtor in that adversary proceeding from its commencement, and beginning at least as early as June 18, 2013, attorney Bigelman and his firm also have represented Debtor in this bankruptcy case. On June 24, 2013, Mr. Bigelman filed, on behalf of Debtor, amended Schedules A, B, C, F, G, H, and an amended Statement of Financial Affairs, all to try to correct the many false statements in the original Schedules and Statement of Financial Affairs (Docket # 26).

On February 18, 2014, the Court held a trial in the adversary proceeding. Debtor testified at the trial, in substance, that she had provided her former attorney, Todd M. Gers, with all of the necessary financial documents and information to fill out her Schedules and Statement of Financial Affairs truthfully and completely, and that she relied on attorney Gers's expertise as a bankruptcy attorney to make sure that her Schedules and Statement of Financial Affairs contained all of the necessary disclosures. The essence of Debtor's defense at trial in the adversary proceeding is that all of the false statements in her Schedules and her Statement of the Financial Affairs were the fault of her former attorney, Todd M. Gers, and that attorney Gers was very careless in his preparation of her bankruptcy papers.³ Attorney Gers was not called as a

³ A copy of the trial transcript is on file in the adversary proceeding, at Docket # 59, and is being filed today in this case in the Supplement to this Order. *See, e.g.*, Trial Tr. at 11 ln. 16 through 12 ln. 22, 14 lns. 14-20, 15 lns. 2-3, 17 lns. 11-15, 44 lns. 19-20, 57 ln. 25 through 58 ln. 9, 60 lns. 3-6, 61 ln. 16 through 62 ln. 4, 63 lns. 12-20, 73 ln. 6 through 74 ln. 6, 79, lns. 8-16, 80 lns. 3-5, 85 lns. 1-20, 88 lns. 9-15, 89, lns. 7-23, 90 ln.24 through 95 ln. 15, 97 lns. 3-11, 101 lns. 12-19, 111 lns. 5-13, 118 lns. 3-11, 139 ln. 24 through 141 ln. 5, 141 ln. 20 through 143 ln. 14.

witness during the trial.⁴

In his closing argument at trial, Debtor's attorney Mr. Bigelman argued, in part, as follows:

. . . What this case is about is about my client Christie Wandrie hiring what she presumed to be a seasoned bankruptcy attorney who made an absolute mess of things.

You heard today her uncontroverted testimony of what she gave Mr. Gers, what their conversations were, why the schedules were drafted in the manner that they were. And he drafted these schedules as sloppily and as carelessly as I've ever seen schedules drafted.

John [Nemecek, Plaintiff Trustee's attorney] today even pointed out stuff that I didn't notice that he -- on Schedule J he files this case as a -- as a -- as a joint case with separate households. I mean the [comedy] of errors, it -- it's really mind boggling. And it's embarrassing that a member of our Bar is -- is here because of that.

You can look at Ms. Wandrie, she's not some criminal mastermind that has tried to defraud the bankruptcy estate, or this Bankruptcy Court. She hired the wrong attorney and that's why she's here. If she hired Mr. Nemecek's firm, or my firm, she would not be here today. But for Christie hiring Mr. Gers, she would not be here.

And we know that he filed his own bankruptcy case in the same careless manner.⁵ But in his case it was a heck of a lot worse because he was hiding assets that he couldn't protect. Here, there is not one single allegation or piece of evidence that Christie was

⁴ Attorney Gers was listed as a "may call" witness by Debtor, but was not called as a witness at trial. (See Final Pretrial Order (Docket # 45 in Case No. 13-4636 at 14)).

⁵ Attorney Gers filed his own Chapter 7 bankruptcy case in this Court on March 26, 2013, Case No. 13-45996. Beginning at least as early as June 6, 2013 and through the present, Gers has been represented in his bankruptcy case by attorney Jeffrey Bigelman's firm. Gers obtained a discharge in his Chapter 7 case on September 4, 2013. (See Notice of Appearance, etc.; and Order Discharging Debtor (Docket ## 23, 72 in Case No. 13-45996)).

trying to hide any assets with any equity that could not have been exempted, none of that.

...

Prior counsel had all of the information to properly draft the schedules, he did not. Admittedly Ms. Wandrie, even if she is a lay person, should have done a better job reviewing the schedules. But as poorly as they were drafted, you would have to fly spec them because I'm guessing there's probably mistakes elsewhere in the schedules. That's how poorly they were drafted.

...

We know that Mr. Gers had a duty, an obligation to amend the schedules that he know -- that he knew were improper. He sat there at the 341 hearing testimony that contradicted what was in the bankruptcy schedules and did nothing. He received emails from Ms. Wandrie about certain transactions and did nothing.

...

But Ms. Wandrie she relied upon poor advice of counsel.⁶

Based on all of the false statements in Debtor's Schedules and Statement of Financial Affairs, which were prepared and filed by attorney Gers, and Debtor's testimony and argument at trial that she provided Mr. Gers with all of the necessary financial documents and information to fill out her Schedules and Statement of Financial Affairs truthfully and completely, it appears that attorney Gers may have violated Fed.R.Bankr.P. 9011(b)(2) and (b)(3), which provide:

(b) Representations to the court

By presenting to the court (whether **by** signing, **filing**, submitting, or later advocating) a petition, pleading, written motion, or **other paper**, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

...

⁶ Trial Tr. at 139-140, 141-42, 143.

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery[.]

Id. (emphasis added)(footnote omitted). *See generally In re Opra*, 365 B.R. 728, 737-43 (Bankr. E.D. Mich. 2007). The Court is entering this Order under Rule 9011 on its own initiative, under Fed.R.Bankr.P. 9011(c)(1)(B).

An attorney who violates Fed.R.Bankr.P. 9011 may be sanctioned, under Rule 9011 itself, under the Court's inherent authority to sanction misconduct, and under 11 U.S.C.

§ 105(a). *See generally In re Mehlhose*, 469 B.R. 694, 708-11 (Bankr. E.D. Mich. 2012).

Fed.R.Bankr.P. 9011(c)(2) provides, in part:

(2) *Nature of Sanction: Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

See also In re Opra, 365 B.R. at 741-43.

It also appears that attorney Gers may have violated 11 U.S.C. §§ 526(a)(1) and (a)(2), which state:

(a) A debt relief agency⁷ shall not—

(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue or misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading[.]

Under 11 U.S.C. § 526(c)(2):

Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and a hearing, to have--

(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

...

or

(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

11 U.S.C. § 526(c)(5) provides for further possible sanctions. It states:

(5) Notwithstanding any other provision of Federal law and in

⁷ As Debtor's attorney in this case, attorney Gers was a "debt relief agency." See 11 U.S.C. § 101(12A); *Milavetz, Gallop & Milavetz v. United States*, 559 U.S. 229, 235-36 (2010).

addition to any other remedy provided under Federal or State law, if the court, on its own motion or on the motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may--

(A) enjoin the violation of such section; or

(B) impose an appropriate civil penalty against such person.

For these reasons,

IT IS ORDERED that attorney Todd M. Gers must appear before this Court, in person, on **May 28, 2014 at 1:00 p.m.**, in Courtroom 1925, 211 West Fort St., Detroit, Michigan, and show cause why he has not violated Fed.R.Bankr.P. 9011(b), and show cause why he should not be sanctioned for his filing of Debtor's Schedules and Statement of Financial Affairs, and for his failure to take any action to amend and correct the many false statements in the Schedules and Statement of Financial Affairs.

IT IS FURTHER ORDERED that attorney Todd M. Gers must file a written response to this Order, *no later than May 22, 2014*.

Signed on May 1, 2014

/s/ Thomas J. Tucker

Thomas J. Tucker

United States Bankruptcy Judge